

Comments of BlueStar Energy Services, Inc. on the ORMD Strawman Version 1.2

Section I: Marketing Practices / Enrollment

Section 5 (Telemarketing)

(iv) If a customer initiates a call to an ARES, the ARES must follow the requirements in 815 ILCS 505/2EE (c) in addition to reading the customer all the items included in the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure statement below. The ARES must also require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement and sales contract must be **mailed** to the customer within 3 business days of the utility confirmation of accepted enrollment.

BlueStar Comment: If a customer agrees to receipt of documents via email, then the ARES should have the option of sending the disclosure statement and sales contract in that manner (and in lieu of mailing a paper copy).

Section II: Rescission/Deposits/Early Termination and Automatic Renewal of Contract

1. Rescission of sales contract

Within one business day after accepting a valid electronic enrollment request from the ARES, the electric utility will notify the customer in **writing** of the scheduled enrollment and the name of the ARES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the ARES within **ten** calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

BlueStar comment: Two comments here. First, it should be made explicit that the written notification includes email correspondence. Customers should contact the ARES directly, and not the utility. The written notification from the utility could contain that ARES rescission contact information, including telephone and fax numbers, email and mailing addresses, and should direct customers to contact the ARES directly.

Second, ten calendar days is needlessly excessive for the rescission window, and will result in higher prices for consumers as additional risk premiums will be built into the price to account for the extended period of uncertainty. In its experience, BlueStar has not received any rescission requests from Illinois consumers after the third business day. To the extent that the customer is allowed to contact the utility to initiate rescission, that should not toll the three business day period. The utility should be required to direct calls to the ARES for rescission matters.

3. Early Termination Fee

Any agreement that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the ARES.

BlueStar comment: The highlighted language should be removed. If early termination fees are accurately disclosed in an easy-to-understand manner prior to the execution of the contract, then consumers should not be allowed to game the system by canceling their agreement simply because a better deal comes along a month later. This type of provision will discourage suppliers from offering any sort of fixed price product to customers.

Early termination fee provisions are part and parcel of service contracts that consumers enter into all the time; there is no reason that ARES contracts should be subject to less protection under the law than those of other service providers. Indeed, by requiring greater (and more meaningful) prior to execution of the contract, consumers will already be in a better position vis-à-vis almost all other service providers in Illinois.

4. Contract expiration and renewal offers

(i) Contract Expiration.

(3) For contracts with a term greater than six months, a statement in bold lettering no smaller than 12 point font that no termination fee shall apply 31 days prior to the date stated as the expiration date in the notice. No such statement is required if the customer is not subject to early termination fees.

BlueStar comment: Again, there is no justification for giving a customer the right to unilaterally breach the contract as it draws to a close. Even putting aside the significant logistical issues (imprecise meter reads, etc.) presented by trying to implement such a provision, there is simply no legitimate reason to interfere with an ARES contract, nor any corresponding benefit to the consumer. This will require an additional premium built into the customer's contract without any discernible benefit.

Section III: Uniform Disclosure Requirements

- 10) A statement that the customer may rescind the agreement within ten calendar days of the utility processing the enrollment request by calling either the ARES or the utility and provide both phone numbers;

BlueStar Comment: As explained above, the appropriate rescission window is three business days, not ten calendar days.

- 13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;

BlueStar Comment: ARES have no control over actions of the utility, so the appropriate language would be that the utility is required to send written notification confirming the switch of suppliers.

Section IV: Dispute Resolution/Customer Complaint Reports

3. Disclosure of ARESs' level of customer complaints

The Commission shall, on a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its World Wide Web site. The summary shall be in an easy-to-read and user friendly format. The Commission shall develop a ranking system of individual ARES' complaints ratios in comparison with an ARES-wide complaint ratio, as well as the associated ranking methodology.

BlueStar comment: In order to provide more meaningful context to the reporting of complaints, the summary should include resolution, whether the complaint was found to be meritorious or not, and/or a notation indicating that resolution is pending. Similarly, there should be an admonition that the mere act of filing of a complaint should not be construed as meaning that the ARES is actually guilty of any violation.

Section V: Enforcement

(viii) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on an ARES's opportunity to sell electricity to retail customers:

(c) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;

BlueStar comment: This provision will need to comply with the Illinois Criminal Code as it relates to eavesdropping (720 ILCS 5/Article 14).